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DATE ISSUED: **October 16, 2000**

CASE NO.: 2000-LHC-904

OWCP NO.: 7-143294

IN THE MATTER OF

JOHN GRAY
Claimant

v

MOSS POINT MARINE/HALTER MARINE SHIPYARD
Employer

RELIANCE NATIONAL INDEMNITY CO.
Carrier

APPEARANCES:
Rebecca J. Ainsworth, Esq.
For Claimant

Donald P. Moore, Esq.
For Employer

BEFORE: C. RICHARD AVERY
Administrative Law Judge

DECISION AND ORDER

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et. seq.*, (The Act), brought by John Gray (Claimant) against Moss Point Marine/Halter Marine Shipyard (Employer) and Reliance National Indemnity Co. (Carrier). The formal hearing was conducted at Gulfport, Mississippi on August 15, 2000. Each party was represented by counsel, and each presented documentary evidence, examined and cross examined the witnesses, and made oral and written arguments.[1] The following exhibits were received into evidence Joint Exhibit 1, Claimant's Exhibits 1-13 and Employer's Exhibits 1-4, 6-11.[2] This decision is based on the entire record.[3]

Stipulations

Prior to the hearing, the parties entered into joint stipulations of facts and issues which were submitted as follows:

1. Employer disputes that an injury or accident occurred on May 28, 1993;

2. That jurisdiction of this claim is under the Longshore and Harbor Worker's Compensation Act, 33 U.S.C. § 901 *et seq.*;

3. That an employer/employee relationship existed at time of alleged accident;

4. That the Employer disputes that it was timely advised of the injury;

5. That a timely Notice of Controversion was filed;

6. That Claimant's average weekly wage at time of injury is disputed;

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[1]The parties were granted time post hearing to file briefs. This time was extended up to and through September 22, 2000.

[2] Employer's Exhibit 5 was submitted post hearing, without objection from Claimant.

[3] The following abbreviations will be used throughout this decision when citing evidence of record: Trial Transcript Pages- "Tr. __, lines __"; Joint Exhibit- "JX __, pg.__"; Employer's Exhibit- "EX __, pg.__"; and Claimant's Exhibit- "CX __, pg.__".

7. No compensation has been paid at this time;

8. That Claimant's date of maximum medical improvement is disputed.

Unresolved Issues

The unresolved issues in this case are:

1. Is claimant entitled to medical treatment (specifically electric and/or nerve studies) as recommended by Dr. McCloskey for his alleged carpal tunnel syndrome injury;

2. In the event that Claimant claims entitlement to any compensation benefits, Employer reserves the right to raise as an issue the statute of limitations[4];

3. Attorney's fees;

4. Employer's credit for compensation and wages paid.

Statement of the Evidence

Testimonial and Non Medical Evidence

Claimant's counsel did not question Claimant during the trial. She preferred to rely on the depositions offered into the record. Employer's counsel, however, cross examined Claimant during trial. His questions referred, in part, to the previous depositions and interrogatories taken in this matter.

Employer's exhibit 7 and Claimant's exhibit 12 is the deposition of Claimant taken on August 13, 1996.[5] Claimant testified that he graduated from high school, but did not go any further in his schooling. He had been married for 6 years and has 2 children.

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[4]Entitlement to compensation was not an issue at this hearing and Employer reserved the right to raise timeliness of claim if compensation should ever become an issue.

[5] All page numbers cited will be referenced with the actual page numbers of the deposition itself, not the page numbers assigned by the parties. This holds true for the 1996, 1998 and 2000 deposition.

The injury that is the subject of this August 1996 deposition was Claimant's back injury which occurred in September 1993. Claimant described the circumstances under which he injured his back, while working at Moss Point as a welder. He discussed the various doctors that examined him. They included Drs. Cooper, Slater, Bazzone, and McCloskey. Claimant was hospitalized so that various tests could be performed, such as a CAT scan. Claimant also testified that the hospital ran tests on his arm. (EX 7, pg.15)

Claimant testified that he had injuries, prior to the September 1993 back injury, while working at Moss Point Marine (Moss Point). Claimant had once cut his leg and bruised his back muscles. Claimant testified that he had pulled muscles in his arms, shoulder, and back about two or three weeks before injuring his back in September 1993. (EX 7, pg. 17). Claimant reported the injury to his Employer, but Employer refused to authorize Claimant to be examined by a doctor. Claimant was examined by Dr. Gonzalez for that injury, but at his own expense. Claimant never filed a claim for that injury. At the hearing, Claimant, on cross examination, was asked to refer to this 1996 deposition. Employer asked Claimant to pinpoint in the deposition where exactly he (Claimant) had told Employer about the previous arm injury. Claimant testified that he thought he had done so when he told Employer that he had pulled muscles in his arm and back. Claimant then testified that perhaps he had not understood the question.

Claimant, in the 1996 deposition, discussed his employers prior to Moss Point. Before working at Moss Point as a welder, Claimant worked as a welder at American Tank and Vessel. Prior to American, he did fitting and welding at Harrison Brothers. Claimant had previously worked at Moss Point as a tacker, and he also worked at Halter Marine. After the September 1993 back injury, Claimant worked at Moss Point for about two more weeks. Claimant next worked as a welder at L&L Enterprises (L&L) in 1995.

At L&L, Claimant welded the arms for tree stands, which are used for deer hunting. Claimant would weld 250 to 275, maybe 300, arms for the tree stands per day. According to Claimant, L&L wanted Claimant to weld 640 arms per day. In order to weld the arms, Claimant first had to pick up and place pieces of thin tubing pipe into a jig. The jig prevented the pieces from moving around so that the welding could be accomplished. According to Claimant, the pieces of tubing pipe were a couple of feet long and weighed about one pound. In order to properly

perform the weld, Claimant stood up at his work station. Other employees usually provided Claimant with the pieces of tubing pipe. Occasionally, when Claimant ran low, he would get his own pieces of pipe, until another co-worker brought him more pieces. If Claimant got his own pieces of pipe, he would carry approximately 15 to 20 pieces. Claimant explained that the entire arm weighed about 1 pound and that unless he carried 15 or 20 long pieces, he would only be carrying about 10 or 12 pounds.

Claimant testified that he worked at L&L for approximately three to three and one half months. According to Claimant, he stopped working at L&L because of lower back pain and swelling in his arms and hands. Claimant testified that he took off time from work because of the back pain. He also stated that he missed work due to his brother's death and that when he returned to L&L, there was a note in his check stating that his services were no longer needed. Gene Smith, Human Resource Manager at L&L, stated in a letter addressed to Employer's counsel, dated September 24, 1996, that Claimant was neither asked to leave his employment nor told his services were no longer needed. (EX 6)

During his employment at L&L, Claimant testified that he was examined by Dr. McCloskey because of swelling in his hands and arm. According to Claimant, Dr. McCloskey did not pull him from work during his stint at L&L. Dr. McCloskey did not issue medical restrictions against driving. Claimant, at the time of the deposition, wore a back brace and took medication prescribed by Dr. McCloskey.

Claimant testified that he has not worked anywhere else since L&L. Claimant received correspondence from a vocational counselor, but did not follow up on any of those job opportunities. As regards Claimant's income, he receives worker's compensation from the September 1993 back injury[6], and food stamps. Since Claimant is not currently employed, he stays home with his children while his wife goes to work.

Employer's Exhibit 7 and Claimant's Exhibit 13 is the deposition of Claimant taken on February 12, 1998. The subject of that deposition was Claimant's claim

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[6] Employer's Exhibit 3 is the stipulated order awarding compensation to Claimant for his September 1993 back injury.

regarding his carpal tunnel injury. Claimant lived in a rented trailer with his wife and two children. Claimant had remained unemployed since the 1996 deposition. He had operated a lawn tractor a couple of times, but according to Claimant he had to stop because he was in pain. Claimant had not done any welding, and the only income he received was worker's compensation from his back injury.

Claimant testified that he worked at L&L Enterprises (L&L) for about two to two and one half months. Employer provided Claimant's actual dates of employment: March 21, 1995 through July of 1995. (EX 7, pg. 84-86) Claimant thereafter agreed that he had worked at L&L for about 4 months. At L&L, when Claimant performed the weld on the arms, he performed 6 welds on each of the 250 to 300 pieces per day. Claimant's welding tool used was a "short arc, like flux core." It was wire fed. (EX 7, pg.17) The welding machine used was a "mig machine." (EX 7, pg. 18) The machine and hose or line from the machine weighed about five or ten pounds, according to Claimant. Claimant explained that the flux core wire is positioned on the machine itself, and the machine feeds it through a line. (EX 7, pg. 18) Claimant must use both of his hands to put the pieces together in the jig, weld them, take the pieces out and hang them up. Occasionally, Claimant lifted ten pound rolls of wire himself.

In June 1995, Claimant testified that he went to Dr. McCloskey. According to Claimant, he told Dr. McCloskey that he was again employed and as a result he was having trouble with his hands. His visit to Dr. McCloskey would have been about 3 months after he began working at L&L. Claimant said his hand started swelling and the problem worsened with his work at L&L. Claimant testified that he also had swelling when he injured his hand while employed at Moss Point. During the time from when Claimant allegedly injured his hand at Moss Point until he began working at L&L, Claimant testified that his hand did not swell as long as he did not use it. Claimant testified that he told his foreman at L&L, Ronnie Fuller, that his hands were bothering him. He told Mr. Fuller two or three weeks after he began working there, "just when it started really bothering me, swelling up and all." (EX 7, pg. 21) According to Claimant, Mr. Fuller told Claimant to do what work was possible. Claimant was on pain medication. Claimant testified that other employees who worked alongside him noticed that his hands were swollen.

Claimant discussed the circumstances surrounding his May 1993 hand injury. Claimant stated he was employed at Moss Point. He picked up manhole inserts

(sandwich lid) to seal manholes in the engine room and in the process he injured his hand. His injury occurred Friday, but he did not report it to his supervisor, leader man, or safety man until Monday. On Monday he went to the first aid nurse, who according to Claimant, gave him anti-inflammatory pills. The company refused to send Claimant to a doctor, so Claimant went on his own.[7] Claimant went to see Dr. Gonzalez the next day, Tuesday. According to Claimant, Dr. Gonzalez, a general practitioner, told him to wear a sling and stay off work for three weeks. Dr. Gonzalez prescribed pain medication for Claimant. Claimant testified that the safety man at Moss Point explained to him that if he missed work he would be fired. Claimant, therefore, did not take any time off from work. Claimant did not file a claim for his May 1993 hand injury at the time of the injury. Instead, he filed a claim for this injury in March 1997.

Claimant, when employed at Moss Point, was a tank tester. He testified that his job required lots of heavy lifting. According to Claimant, he frequently moved his welding cables, which weighed about 200 to 250 pounds. The inserts he used to perform his job, according to Claimant, weighed approximately 100 to 125 pounds apiece. Claimant also carried 5 gallon cans of bolts and nuts. Claimant testified that he continued to perform these duties after he injured his arm. He testified that he never received warnings about unsatisfactory work after the arm injury. If Claimant was not able to do his work, he testified that one of his team members would help him and finish the job.

Employer's Exhibit 11 is a third deposition of Claimant taken on July 26, 2000, apparently to update Claimant's status. Claimant has remained unemployed since working at L&L. Claimant testified that he applied for various jobs in 1998. He applied as a welder with Ellis Trailers and Sunshine Trailers. The only possible employer Claimant heard back from was Port City Trailers. Claimant also applied for a position at Wal-Mart, Wayne Lee's Grocery, and Western Motel and Hampton Inn as a desk clerk. Claimant testified that he no longer owns his welding equipment, because he gave it to his cousin after his termination from L&L.

Claimant testified that he has not seen Dr. McCloskey in the year 2000, but

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[7]During cross examination, Claimant testified that the company refused to pay for the treatment by Dr. Danielson and that the medical bill is still outstanding. As would later be established through testimony, Claimant mistakenly referred to Dr. Gonzalez as Dr. Danielson.

that he did see him once, prior to year 2000, but he was unsure of the exact year. Claimant testified that Dr. McCloskey referred him to Dr. Laseter. One such referral was prior to the year 2000, during which Claimant had shots in his lower back to deal with the pain. The second time he saw Dr. Laseter was in the year 2000, during which Claimant had an MRI in relation to his back problem. Claimant is currently on pain medication prescribed by Dr. Laseter. Claimant also testified that Dr. Laseter recommended whirlpool treatments, but that he never had such treatment. As regards Drs. Laseter and McCloskey, treatment has been paid. Claimant testified that he had to see another doctor when he ran out of pain medication for his back. He testified that he had to go to the George County Hospital once due to his back pain. Several years ago, Claimant saw Dr. Monsteller, for seizures he experienced. He never saw Dr. Monsteller for his back or hand injury.

Since Claimant is unemployed, he stays at home with his two children, and three step-daughters. He performs daily chores, such as cleaning and laundry. Claimant mows his yard occasionally, but he usually has someone help him. He testified that when he does mow, he experiences swelling in his lower back and neck, and swelling and pain in his right wrist. Claimant also stated that when his right arm swells, he has pain in his left palm, but his left arm does not swell. Claimant also testified that he has occasional pain in his hands and wrist when his back and neck are not swollen, but that mostly he has pain in his hand and arm when his neck and back are swollen.

Employer Exhibit 10 comprises two groups of interrogatories answered by Claimant, dated May 7,1996 and July 26, 2000. As regards the May 7, 1996 interrogatories, Claimant described other injuries he sustained while employed at Moss Point Marine. Claimant testified at trial that the problems he had were with his right arm and that seven years ago Dr. McCloskey performed tests related to that arm. Employer specifically asked Claimant, during cross examination, to relate to the Court his answer to the question of whether or not Claimant had injured himself prior to the September 1993 back injury. Claimant answered that he had bruised his back muscles and that he had cut his leg. Claimant admitted that the answer to the interrogatory he read to the Court did not mention any injury relating to his right arm.

Employer's Exhibit 6 is the employment records of L&L Enterprises

regarding Claimant. Page 16 is a training report, dated June 26, 1995. The reporting date is May 15, 1995 through June 9, 1995. Claimant's overall rating as a trainee was a 2, which is "below average." The report states that yes, "the trainee is experiencing problems in the training with which he may need assistance."

Medical evidence

Claimant's Exhibit 1 is Dr. Gonzalez's report, dated June 1, 1993. This report is virtually unintelligible. The handwritten notes indicate visits on June 1 and June 6. Apparently, Claimant presented himself with pain in his arm from lifting at work. He was given medication. Otherwise, little can be determined from the record.

Claimant's Exhibit 4 and Employer's Exhibit 4 is Dr. McCloskey's report, dated November 1, 1993. According to the report, Claimant's chief complaint was back pain, pain between his shoulder blades and numbness in the right hand. As regards Claimant's history of present illness, Claimant told Dr. McCloskey that he twisted his back while working at Moss Point Marine on September 7, 1993. He previously had an MRI scan which showed a degenerative L5 disk. His symtomatology, when referred to Dr. McCloskey, included pain and burning is his legs, knees and neck, numbness and tingling in his right hand, and headaches. Claimant denied any prior problems. As regards Claimant's past medical history, Claimant admitted to headaches and seizures. Claimant explained that four years earlier he hurt his back, but that he fully recovered. Claimant underwent a physical examination.

According to the report, Claimant appeared alert and oriented. He wore a back brace, had stooped posture and appeared "miserable." His low back motion was very limited. Claimant's heart, lungs, abdomen and extremities appeared normal. He had no neurological deficits.

Claimant was admitted from Dr. McCloskey's office to the hospital, on November 1, 1993. His vital signs appeared normal. His chest x-ray, EKG, and lateral cervical spine x-ray were negative. CAT scan of his back and laboratories were unremarkable. Electrical studies of the right arm were negative. Claimant had been treated with pain medications and physical therapy. Claimant was provided with a back brace. Dr. McCloskey's recommendation was for Claimant to take it

easy and get on a walking program. Claimant was to have follow up visits with Dr. McCloskey. Dr. McCloskey's impression was severe post traumatic low back syndrome, and post traumatic headaches. Claimant was discharged from the hospital on November 5, 1993.

Employer's Exhibit 5 concerns the EMG/NCV performed on November 3, 1993, while Claimant was in the hospital. The nerves tested were the right median motor and sensory nerve, and the right ulnar motor and sensory nerve. The findings made by the examiner, Dr. Terry Millette, were normal NCV's in nerves tested and normal EMG in muscles tested.

Employer's Exhibit 5 includes the work release/restriction form, dated November 14, 1995. It is signed by Dr. McCloskey. Claimant was issued to return to regular duty with permanent restrictions. The restrictions included light duty, released to on the job training as a tacker, and limited to 25 pounds weight- lifting limit.

Claimant's Exhibit 5 and Employer's Exhibit 4 is Dr. McCloskey's report, dated August 15, 1994. Claimant made a return visit to be examined by Dr. McCloskey. The report stated that Claimant had continuing complaints of neck pain, pain between his shoulder blades and low back pain. The report stated that Claimant's main complaint was low back pain. Claimant also complained of numbness and tingling in his arms and hands. Dr. McCloskey recapitulated Claimant's prior tests: the electrical studies of Claimant's arms were negative; the MRI showed a degenerative L5 disc. The report also summarized Claimant's treatment to date: medication and physical therapy. The report stated that Claimant had been seen by Dr. Bazzone and that Claimant had a complete myelogram. The myelogram and CAT scan revealed a disc herniation and, according to the report, Dr. McCloskey believed that the herniation was the cause of Claimant's low back problems.

Claimant did not have any neurological deficits, but Dr. McCloskey observed "the numbness and tingling in his arms might be from his neck, but I suspect that he has carpal tunnel."[8] Dr. McCloskey believed that Claimant had reached maximum medical improvement. Dr. McCloskey thought that Claimant

[8]Claimant's Exhibit 5, page 1 and Employer's Exhibit 4, page 5.

"has identifiable problems in his neck and low back."[9] The report also stated that as regards Claimant's neck and low back that Claimant was permanently limited to light work and he rated Claimant's permanent partial physical impairment at 15% of the whole man. Dr. McCloskey suggested that Claimant go to Dr. Schultz, a chiropractor, but Dr. McCloskey did not recommend any further physical therapy for Claimant.

Claimant's Exhibit 6 and Employer's Exhibit 4 is Dr. McCloskey's report, dated June 1, 1995. Claimant made a return visit to Dr. McCloskey. Dr. McCloskey, in his report, summarized Claimant's medical history, symptoms, and treatments he had undergone. "I mentioned in my note of that date [August 15, 1994] that I thought that he had a right carpal tunnel syndrome, but I did not give him any permanent rating because of the lack of electrical findings."[10] The report goes on to state that Claimant had returned to Dr. McCloskey because of further problems he experienced as a result of working at L&L.[11]

The reports states that Claimant's main problem, as a result of working for 10 weeks assembling tree stands, was with his right hand. Dr. McCloskey states in his report that Claimant was having pain, numbness and tingling in his right hand. The fingers affected were his thumb, index and middle finger. Claimant had a positive Phalen test. "It would appear to me that he has a significantly symptomatic right carpal tunnel syndrome."[12] Dr. McCloskey recommended repeating the electrical study of Claimant's right hand, obtaining an x-ray of the right hand and wrist, and using a carpal tunnel splint.

Employer's Exhibit 4 contains a letter, dated June 8, 1995, written by Claimant's attorney addressed to Dr. McCloskey. That letter asks Dr. McCloskey whether or not Claimant's right carpal tunnel syndrome is related to the September

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[9]Id.

[10] Claimant's Exhibit 6, pg 1 and Employer's Exhibit 4, pg. 6.

[11]The report does not specifically state Claimant worked at L&L, but other evidence shows that Claimant was employed at L&L Enterprises, assembling tree stands, at the time of this visit.

[12]Claimant's Exhibit 6, pg. 1 and Employer's Exhibit 4, pg. 6.

7, 1993 accident.[13] Employer's Exhibit 4 and Claimant's Exhibit 7 is Dr. McCloskey's response, dated June 12, 1995. Dr. McCloskey states that Claimant does have carpal tunnel syndrome, from a clinical perspective. Dr. McCloskey stated that carpal tunnel syndrome is a progressive problem. He stated that the "key thing though is that his [Claimant's] current employment has really brought the problem to the forefront."[14] The letter stated that if Claimant foregoes the use of his hand, his symptoms are tolerable. According to Dr. McCloskey, Claimant is very symptomatic as a result of working with his right hand. Dr. McCloskey ordered another electrical study of Claimant's right hand and wrist and stated that he wanted to try more medication and a carpal tunnel splint.

Claimant's Exhibit 8 and Employer's Exhibit 4 is Dr. McCloskey's report, dated November 22, 1997. This report is a neurosurgical evaluation. The report reiterated Claimant's chief complaint: Back and leg pain, pain between shoulder blades, headache, right arm pain, and right hand numbness, tingling and aching. The report details Claimant's history of the present illness, and past medical history. Dr. McCloskey performed a physical examination of Claimant. Dr. McCloskey's impression is "suspected symptomatic right carpal tunnel syndrome; minimally symptomatic disc herniation, C5-6; HNP, L5 with chronic low back and bilateral leg pain; and history of ulcers."[15] Dr. McCloskey refilled Claimant's medication and ordered another EMG and nerve conduction study of his right arm.

Claimant's Exhibit 10 is a request, dated September 29, 1994, to Employer's Claims Adjuster for Claimant to be evaluated by Dr. Chris Wiggins for carpal tunnel syndrome. Claimant's Exhibit 11 is correspondence, dated June 23, 1995, from Employer's Claims Adjuster denying treatment for carpal tunnel syndrome.

Findings of Fact and Law

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[13]Claimant's attorney argued at trial that she was in error when relating the date of the accident as September 1993, instead of May 1993. Employer's attorney argued that while Claimant's attorney might have been in error, she offered into evidence a letter concerning a September 1993 back injury, not the May 1993 hand injury.

[14]Claimant's Exhibit 4, pg. 1 and Employer's Exhibit, pg. 11.

[15]Claimant's Exhibit 8, pg. 2 and Employer's Exhibit, pg. 8.

Section 12

This claim is for medical benefits, not compensation. Medical benefits do not proscribe. Section 12 is not relevant at this time.

Causation

Section 20 (a) of the Act provides claimant with a presumption that his disabling condition is causally related to his employment if he shows that he suffered a harm and that employment conditions existed which could have caused, aggravated or accelerated the condition. *Merrill v. Todd Pacific Shipyards Corp.*, 25 BRBS 140 (1991); *Stevens v. Tacoma Boat Bldg. Co.*, 23 BRBS 191 (1990). The Section 20 (a) presumption operates to link the harm with the injured employee's employment. *Darnell v. Bell Helicopter Int'l, Inc.*, 16 BRBS 98 (1984). It must be further recognized that all factual doubts must be resolved in favor of Claimant. *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968); *Strachan Shipping Co. v. Shea*, 406 F.2d 521 (5th Cir. 1969). Furthermore, it has been consistently held that the Act must be construed liberally in favor of Claimant. *Voirs v. Eikel*, 346 US 328, 333 (1953); *St. John Stevedoring Co. v. Wilfred*, 818 F.2d 397, 399 (5th Cir. 1987).

Once the claimant has invoked the presumption the burden shifts to the employer to rebut the presumption with substantial countervailing evidence. *James v. Pate Stevedoring Co.*, 22 BRBS 271 (1989). If the presumption is rebutted, the administrative law judge must weigh all the evidence and render a decision supported by substantial evidence. *Del Vecchio v. Bowers*, 296 U.S. 280 (1935).

If the claimant's disability results from the natural progression of the first injury, then the claimant's employer at the time of the first injury is the responsible employer. If his employment thereafter aggravates, accelerates or combines with the earlier injury, resulting in the claimant's disability, claimant has sustained a new injury and the employer at that time is the new employer responsible for the payment of benefits thereafter. *Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45 (CRT) (5th Cir. 1986) (*en banc*); *McKnight v. Carolina Shipping Co.*, 32 BRBS 165, *aff'd on recon. en banc*, 32 BRBS 251 (1998). Section 20(a) of the Act, 33 U.S.C. § 920 (a), is inapplicable to a determination of the responsible employer. *Buchanan v. Int'l Transp. Services*, 31 BRBS 81 (1997). The first

employer bears the burden of proving that there was a new injury or aggravation with the second employer in order to be relieved of its liability as responsible employer. The second employer, on the other hand, must prove that claimant's condition is solely the result of the injury with the first employer in order to escape liability. A determination as to which employer is liable requires the administrative law judge to weigh the evidence as a whole, and to arrive at a conclusion supported by substantial evidence.

Claimant testified that he injured his hands in May 1993, while employed at Moss Point Marine. He testified that he was lifting manhole covers on a Friday afternoon, when he experienced pain in his hands. Claimant testified that the heavy lifting he performed was a normal activity. He said he reported the incident to Employer on Monday. Claimant testified that Employer would not authorize him to seek medical attention for the injury. Therefore, Claimant went to Dr. Gonzalez the following day for treatment at his own expense. Dr. Gonzalez's records were offered into evidence and established that Claimant presented himself for treatment on June 1, 1993.

Based upon the evidence presented, I find Claimant has met his Section 20(a) prima facie case. Claimant, through his own testimony and Dr. Gonzalez's records, has shown that a harm occurred in May 1993. Claimant has also shown that the work which could have caused the injury was work he normally performed during the course of his employment at Moss Point Marine. Therefore, work conditions existed which could have caused Claimant's hand pain.

Employer has not only met its burden to rebut Claimant's Section 20 (a) presumption with substantial countervailing evidence that Claimant did not suffer from carpal tunnel syndrome as a result of his employment at Moss Point, but when the evidence is weighed as a whole, Claimant has failed to prove that the symptoms from which he now suffers were caused by his employment at Moss Point.

Claimant, in September 1993, while employed at Moss Point injured his back. At that time, his symptomatolgy included numbness and tingling in his right hand. On November 1, 1993 Dr. McCloskey admitted Claimant into the hospital, at which time an electrical study of Claimant's right hand was performed. The finding of the test was negative for carpal tunnel syndrome in Claimant's right hand. In

other words, six months after Claimant's alleged May 1993 injury, he tested negative for carpal tunnel syndrome.

It was not until August 15, 1994 that Dr. McCloskey diagnosed Claimant as having possible carpal tunnel syndrome. This diagnosis was 15 months after Claimant's May 1993 injury and Claimant was no longer employed at Moss Point. The focus of Dr. McCloskey's report, and his examination of Claimant, was on Claimant's lower back pain, not pain in his hand. Dr. McCloskey stated that he believed the disc herniation was responsible for Claimant's pain in his lower back . He also stated that it was possible for the numbness and tingling in Claimant's arms to be connected to his neck problems. He also stated that Claimant's hand pain could be carpal tunnel syndrome. However, Dr. McCloskey performed no test to confirm his suspicions.

Claimant did not test positive for carpal tunnel syndrome until June 1, 1995. Dr. McCloskey's report stated that the reason Claimant returned to Dr. McCloskey was because of further problems he experienced as a result of working at his "current job." That "current job" was employment at L&L Enterprises. It was at L&L that Claimant testified he had to use his hands to weld about 300 arms for tree stands per day. He testified that he had to perform 6 welds per arm. He testified as to the enormous amount of weight he was required to carry or lift.

In sum, Employer has offered a credible doctor's report which stated clearly that Claimant did not test positive for carpal tunnel syndrome during Claimant's employment at Moss Point. Claimant only tested positive for carpal tunnel after being employed and working at L&L. Claimant's only evidence in support of his claim is his testimony and the vague report of Dr. Gonzalez. The 1993 test performed at Dr. McCloskey's direction was negative.

Notwithstanding Claimant's failure to prove causation, I also find Employer would not be liable for medical expenses under any other theory. Specifically, I find that Claimant endured a new injury while working for L&L, which superceded the May 1993 injury, if in fact one occurred. Dr. McCloskey stated in his June 12, 1995 letter to Claimant's counsel that the "key thing though is that his [Claimant's] current employment has really brought the problem to the forefront." During June 1995, Claimant was employed at L&L, not Moss Point Marine. Claimant did not test positive for carpal tunnel until after his employment began at L&L. Even if

Claimant had suffered carpal tunnel as a result of the May 1993 injury at Moss Point, it was Claimant's repetitious work at L&L that aggravated this earlier condition, as evidenced by Claimant's subsequent positive test for carpal tunnel syndrome. In sum, I find Claimant sustained a new injury and Moss Point is not responsible for the payment of medical benefits thereafter.

ORDER

It is hereby **ORDERED** that Claimant's claim for medical benefits under the

Act is **DENIED**.

So **ORDERED** this 16 day of October, 2000, at Metairie, Louisiana.

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C. RICHARD AVERY
Administrative Law Judge

CRA:haw